

2SHB 2130 - S COMM AMD
By Committee on Ways & Means

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** Unless the context clearly requires
4 otherwise, the definitions in this section apply throughout this
5 chapter.

6 (1) "Applicant" means a person applying for a tax deferral under
7 this chapter.

8 (2) "Department" means the department of revenue.

9 (3) "Eligible investment project" means an investment project that:
10 (a) Does not qualify as an eligible investment project under chapter
11 82.60 RCW; and (b) is located in a county with a population density of
12 more than five hundred persons per square mile that does not contain a
13 community empowerment zone designated under RCW 43.31C.020, and that is
14 not one of the three most populous counties in this state.

15 (4)(a) "Initiation of construction" means the date that a building
16 permit is issued under the building code adopted under RCW 19.27.031
17 for:

18 (i) Construction of the qualified building, if the underlying
19 ownership of the building vests exclusively with the person receiving
20 the economic benefit of the deferral;

21 (ii) Construction of the qualified building, if the economic
22 benefits of the deferral are passed to a lessee as provided in section
23 2 of this act; or

24 (iii) Tenant improvements for a qualified building, if the economic
25 benefits of the deferral are passed to a lessee as provided in section
26 2 of this act.

27 (b) "Initiation of construction" does not include soil testing,
28 site clearing and grading, site preparation, or any other related
29 activities that are initiated before the issuance of a building permit
30 for the construction of the foundation of the building.

1 (c) If the investment project is a phased project, "initiation of
2 construction" applies separately to each phase.

3 (5) "Investment project" means an investment of twenty-five million
4 dollars in qualified buildings, qualified machinery and equipment, or
5 both, including labor and services rendered in the planning,
6 installation, and construction of the project.

7 (6) "Manufacturing" has the same meaning as "to manufacture" in RCW
8 82.04.120 and includes the activities of processors for hire.

9 (7) "Person" has the meaning given in RCW 82.04.030.

10 (8) "Qualified buildings" means construction of new structures, and
11 expansion or renovation of existing structures for the purpose of
12 increasing floor space or production capacity, used for renewable
13 energy manufacturing, research and development, or both. "Qualified
14 buildings" include plant offices, warehouses, or other facilities for
15 the storage of raw material or finished goods, if such facilities are
16 an essential or an integral part of a factory, plant, or laboratory
17 used for renewable energy manufacturing, research and development, or
18 both.

19 (9) "Qualified machinery and equipment" means all industrial and
20 research fixtures, equipment, and support facilities that are an
21 integral and necessary part of a renewable energy manufacturing or
22 research and development operation. "Qualified machinery and
23 equipment" includes: Computers; software; data processing equipment;
24 laboratory equipment; manufacturing components such as belts, pulleys,
25 shafts, and moving parts; molds, tools, and dies; operating structures;
26 and all equipment used to control or operate the machinery.

27 (10) "Recipient" means a person receiving a tax deferral under this
28 chapter.

29 (11) "Renewable energy manufacturing" means the manufacturing of
30 materials, components, or equipment for solar, wind, bioenergy, or
31 geothermal energy systems.

32 (12) "Research and development" means the development, refinement,
33 testing, marketing, and commercialization of a product, service, or
34 process related to renewable energy manufacturing before commercial
35 sales have begun. As used in this subsection, "commercial sales"
36 excludes sales of prototypes or sales for market testing if the total
37 gross receipts from such sales of the product, service, or process do
38 not exceed one million dollars.

1 NEW SECTION. **Sec. 2.** (1) The lessor or owner of a qualified
2 building is not eligible for a deferral under this chapter unless:

3 (a) The underlying ownership of the buildings, machinery, and
4 equipment vests exclusively in the same person; or

5 (b)(i) The lessor by written contract agrees to pass the economic
6 benefit of the deferral to the lessee in the form of reduced rent
7 payments; and

8 (ii) The lessee that receives the economic benefit of the deferral
9 agrees in writing with the department to complete the annual survey
10 under section 6 of this act.

11 (2) The economic benefit of the deferral to the lessee may be
12 evidenced by any type of payment, credit, or any other financial
13 arrangement between the lessor or owner of the qualified building and
14 the lessee.

15 NEW SECTION. **Sec. 3.** If a building is used partly for renewable
16 energy manufacturing or research and development and partly for other
17 purposes, the applicable tax deferral must be determined by
18 apportionment of the costs of construction under rules adopted by the
19 department.

20 NEW SECTION. **Sec. 4.** (1) Application for deferral of taxes under
21 this chapter must be made before initiation of construction of the
22 investment project or acquisition of machinery and equipment. The
23 application must be made to the department in a form and manner
24 prescribed by the department. The application must contain information
25 regarding the location of the investment project, estimated or actual
26 costs of the investment project, time schedules for completion and
27 operation, and other information required by the department.

28 (2) The department must rule on the application within sixty days.
29 The department must keep a running total of all deferrals granted under
30 this chapter during the 2009-2011 fiscal biennium.

31 NEW SECTION. **Sec. 5.** (1) The department must issue a sales and
32 use tax deferral certificate for state and local sales and use taxes
33 imposed or authorized under chapters 82.08, 82.12, 82.14, and 81.104
34 RCW on each eligible investment project.

35 (2) This section expires June 30, 2011.

1 NEW SECTION. **Sec. 6.** (1)(a) The legislature finds that
2 accountability and effectiveness are important aspects of setting tax
3 policy. In order to make policy choices regarding the best use of
4 limited state resources the legislature needs information on how a tax
5 incentive is used.

6 (b) Each recipient of a deferral granted under this chapter must
7 complete an annual survey. If the economic benefits of the deferral
8 are passed to a lessee as provided in section 2 of this act, the lessee
9 must complete the annual survey and the applicant is not required to
10 complete the annual survey. The survey is due by April 30th of the
11 year following the calendar year in which the investment project is
12 certified by the department as having been operationally complete and
13 each of the seven succeeding calendar years. The department may extend
14 the due date for timely filing of annual surveys under this section as
15 provided in RCW 82.32.590. The survey must include the amount of tax
16 deferred. The survey must also include the following information for
17 employment positions in Washington:

18 (i) The number of total employment positions;

19 (ii) Full-time, part-time, and temporary employment positions as a
20 percent of total employment;

21 (iii) The number of employment positions according to the following
22 wage bands: Less than thirty thousand dollars; thirty thousand dollars
23 or greater, but less than sixty thousand dollars; and sixty thousand
24 dollars or greater. A wage band containing fewer than three
25 individuals may be combined with another wage band; and

26 (iv) The number of employment positions that have employer-provided
27 medical, dental, and retirement benefits, by each of the wage bands.

28 (c) As part of the annual survey, the department may request
29 additional information necessary to measure the results of, or
30 determine eligibility for, the deferral program.

31 (d) If the person filing a survey under this section did not file
32 a survey with the department in the previous calendar year, the survey
33 filed under this section must also include the employment, wage, and
34 benefit information required under (b)(i) through (iv) of this
35 subsection for the calendar year immediately preceding the preceding
36 calendar year.

37 (e)(i) Except as otherwise provided, all information collected
38 under this subsection, except the amount of the tax deferral taken, is

1 deemed taxpayer information under RCW 82.32.330. Information on the
2 amount of tax deferral taken is not subject to the confidentiality
3 provisions of RCW 82.32.330 and may be disclosed to the public upon
4 request, except as otherwise provided in this subsection.

5 (ii) If the amount of the tax deferral taken as reported on the
6 survey is different than the amount actually taken or otherwise allowed
7 by the department based on information known to the department, the
8 amount actually taken or allowed may be disclosed.

9 (iii) Recipients for whom the actual amount of the tax deferral
10 taken is less than ten thousand dollars during the period covered by
11 the survey may request the department to treat the amount of the tax
12 savings as confidential under RCW 82.32.330.

13 (f) The department must use the information from this section to
14 prepare summary descriptive statistics by category. No fewer than
15 three taxpayers may be included in any category. The department must
16 report these statistics to the legislature each year by October 1st.

17 (2)(a) If a recipient of the deferral fails to complete the annual
18 survey required under subsection (1) of this section by the date due or
19 any extension under RCW 82.32.590, twelve and one-half percent of the
20 deferred tax is immediately due. If the economic benefits of the
21 deferral are passed to a lessee as provided in section 2 of this act,
22 the lessee will be responsible for payment to the extent the lessee has
23 received the economic benefit. The department must assess interest,
24 but not penalties, on the amounts due under this section. The interest
25 must be assessed at the rate provided for delinquent taxes under
26 chapter 82.32 RCW, and accrues until the amounts due are repaid.

27 (b) A recipient who must repay deferred taxes under section 7(2) of
28 this act because the department has found that an investment project is
29 used for purposes other than renewable energy manufacturing or research
30 and development is no longer required to file annual surveys under this
31 section beginning on the date an investment project is used for
32 nonqualifying purposes.

33 NEW SECTION. **Sec. 7.** (1) Except as provided in subsection (2) of
34 this section, taxes deferred under this chapter need not be repaid.

35 (2) If, on the basis of the survey under section 6 of this act or
36 other information, the department finds that an investment project is
37 used for purposes other than renewable energy manufacturing or research

1 and development at any time during the calendar year in which the
2 investment project is certified by the department as having been
3 operationally completed, or at any time during any of the seven
4 succeeding calendar years, a portion of deferred taxes are immediately
5 due according to the following schedule:

6	Year in which	% of deferred taxes due
7	nonqualifying use occurs	
8	1	100%
9	2	87.5%
10	3	75%
11	4	62.5%
12	5	50%
13	6	37.5%
14	7	25%
15	8	12.5%

16 (3) The department must assess interest, but not penalties, on the
17 deferred taxes under subsection (2) of this section. The interest must
18 be assessed at the rate provided for delinquent taxes under chapter
19 82.32 RCW, retroactively to the date of deferral, and accrues until the
20 deferred taxes are repaid. The debt for deferred taxes will not be
21 extinguished by insolvency or other failure of the recipient. Transfer
22 of ownership does not terminate the deferral. The deferral is
23 transferred, subject to the successor meeting the eligibility
24 requirements of this chapter, for the remaining periods of the
25 deferral.

26 (4) Notwithstanding subsection (2) of this section, deferred taxes
27 on the following need not be repaid:

28 (a) Machinery and equipment, and sales of or charges made for labor
29 and services, which at the time of purchase would have qualified for
30 exemption under RCW 82.08.02565; and

31 (b) Machinery and equipment which at the time of first use would
32 have qualified for exemption under RCW 82.12.02565.

33 NEW SECTION. **Sec. 8.** Chapter 82.32 RCW applies to the
34 administration of this chapter.

1 NEW SECTION. **Sec. 9.** Applications approved by the department
2 under this chapter are not confidential and are subject to disclosure.

3 **Sec. 10.** RCW 82.32.590 and 2008 c 81 s 13 and 2008 c 15 s 7 are
4 each reenacted and amended to read as follows:

5 (1) If the department finds that the failure of a taxpayer to file
6 an annual survey or annual report under section 6 of this act or RCW
7 82.04.4452, 82.32.5351, 82.32.650, 82.32.630, 82.32.610, 82.82.020, or
8 82.74.040 by the due date was the result of circumstances beyond the
9 control of the taxpayer, the department shall extend the time for
10 filing the survey or report. Such extension shall be for a period of
11 thirty days from the date the department issues its written
12 notification to the taxpayer that it qualifies for an extension under
13 this section. The department may grant additional extensions as it
14 deems proper.

15 (2) In making a determination whether the failure of a taxpayer to
16 file an annual survey or annual report by the due date was the result
17 of circumstances beyond the control of the taxpayer, the department
18 shall be guided by rules adopted by the department for the waiver or
19 cancellation of penalties when the underpayment or untimely payment of
20 any tax was due to circumstances beyond the control of the taxpayer.

21 **Sec. 11.** RCW 82.32.600 and 2008 c 81 s 14 and 2008 c 15 s 8 are
22 each reenacted and amended to read as follows:

23 (1) Persons required to file annual surveys or annual reports under
24 section 6 of this act or RCW 82.04.4452, 82.32.5351, 82.32.545,
25 82.32.610, 82.32.630, 82.82.020, or 82.74.040 must electronically file
26 with the department all surveys, reports, returns, and any other forms
27 or information the department requires in an electronic format as
28 provided or approved by the department. As used in this section,
29 "returns" has the same meaning as "return" in RCW 82.32.050.

30 (2) Any survey, report, return, or any other form or information
31 required to be filed in an electronic format under subsection (1) of
32 this section is not filed until received by the department in an
33 electronic format.

34 (3) The department may waive the electronic filing requirement in
35 subsection (1) of this section for good cause shown.

1 NEW SECTION. **Sec. 12.** A new section is added to chapter 82.04 RCW
2 to read as follows:

3 (1) In computing the tax imposed under this chapter, a renewable
4 energy manufacturer may claim a credit for its eligible investment
5 project expenditures occurring after the effective date of this act
6 through June 30, 2014.

7 (2) Any credits earned under this section must be accrued and
8 carried forward and may not be used until July 1, 2011. The credit is
9 equal to the amount of eligible investment project expenditures,
10 multiplied by the rate of fifteen percent. Credit may be carried over
11 and used until June 30, 2024. The credit claimed against taxes due for
12 each calendar year must not exceed the amount of tax otherwise due
13 under this chapter for the calendar year. Refunds may not be granted
14 in the place of a credit.

15 (3) Credits are available on a first in-time basis. The department
16 must disallow any credits, or portion thereof, that would cause the
17 total amount of credits claimed statewide under this section in any
18 fiscal year to exceed the following limits: Two million five hundred
19 thousand dollars for fiscal year 2012, two million five hundred
20 thousand dollars for fiscal year 2013, five million dollars for fiscal
21 year 2014, and five million dollars for each fiscal year thereafter
22 until the fiscal year ending June 30, 2024. If the fiscal year
23 limitation is reached, the department shall provide notification to
24 persons claiming credits that the annual statewide limit has been met.
25 The notice must indicate the amount of tax due and shall provide that
26 the tax be paid within thirty days from the date of such notice. The
27 department may not assess penalties and interest as provided in chapter
28 82.32 RCW on the amount due in the initial notice if the amount due is
29 paid by the due date specified in the notice, or any extension thereof.

30 (4) The definitions in this subsection apply throughout this
31 section unless the context clearly requires otherwise.

32 (a) "Eligible investment project" means an investment project that:
33 (i) Does not qualify as an eligible investment project under chapter
34 82.60 RCW; and (ii) is located in a county with a population density of
35 more than five hundred persons per square mile that does not contain a
36 community empowerment zone designated under RCW 43.31C.020, and that is
37 not one of the three most populous counties in this state.

1 (b) "Eligible investment project expenditures" means actual
2 expenditures for an eligible investment project, including labor and
3 services rendered in the planning, installation, and construction of
4 the project.

5 (c) "Investment project" means a twenty-five million dollar
6 investment in qualified buildings, qualified machinery and equipment,
7 or both.

8 (d) "Manufacturing" has the same meaning as "to manufacture" in RCW
9 82.04.120 and includes the activities of processors for hire.

10 (e) "Person" has the meaning given in RCW 82.04.030.

11 (f) "Qualified buildings" means construction of new structures, and
12 expansion or renovation of existing structures for the purpose of
13 increasing floor space or production capacity, used for renewable
14 energy manufacturing, research and development, or both. "Qualified
15 buildings" include plant offices, warehouses, or other facilities for
16 the storage of raw material or finished goods, if such facilities are
17 an essential or an integral part of a factory, plant, or laboratory
18 used for renewable energy manufacturing, research and development, or
19 both.

20 (g) "Qualified machinery and equipment" means all industrial and
21 research fixtures, equipment, and support facilities that are an
22 integral and necessary part of a renewable energy manufacturing or
23 research and development operation. "Qualified machinery and
24 equipment" includes: Computers; software; data processing equipment;
25 laboratory equipment; manufacturing components such as belts, pulleys,
26 shafts, and moving parts; molds, tools, and dies; operating structures;
27 and all equipment used to control or operate the machinery.

28 (h) "Renewable energy manufacturing" means the manufacturing of
29 materials, components, or equipment for solar, wind, bioenergy, or
30 geothermal energy systems.

31 (i) "Research and development" means the development, refinement,
32 testing, marketing, and commercialization of a product, service, or
33 process related to renewable energy manufacturing before commercial
34 sales have begun. As used in this subsection, "commercial sales"
35 excludes sales of prototypes or sales for market testing if the total
36 gross receipts from such sales of the product, service, or process do
37 not exceed one million dollars.

1 (5) In addition to all other requirements under this title, a
2 person claiming the credit under this section must file a complete
3 annual report with the department under section 13 of this act.

4 (6) Credit may not be claimed for expenditures for which a credit
5 is claimed under RCW 82.04.4452.

6 (7) This section expires June 30, 2024.

7 NEW SECTION. **Sec. 13.** A new section is added to chapter 82.32 RCW
8 to read as follows:

9 (1)(a) Every person claiming a tax preference that requires a
10 report under this section must file a complete annual report with the
11 department. The report is due by April 30th of the year following any
12 calendar year in which a person becomes eligible to claim the tax
13 preference that requires a report under this section. The department
14 may extend the due date for timely filing of annual reports under this
15 section as provided in RCW 82.32.590.

16 (b) The report must include information detailing employment,
17 wages, and employer-provided health and retirement benefits for
18 employment positions in Washington for the year that the tax preference
19 was claimed. However, persons engaged in manufacturing commercial
20 airplanes or components of such airplanes may report employment, wage,
21 and benefit information per job at the manufacturing site for the year
22 that the tax preference was claimed. The report must not include names
23 of employees. The report must also detail employment by the total
24 number of full-time, part-time, and temporary positions for the year
25 that the tax preference was claimed.

26 (c) Persons receiving the benefit of the tax preference provided by
27 RCW 82.16.0421 or claiming any of the tax preferences provided by RCW
28 82.04.2909, 82.04.4481, 82.08.805, 82.12.805, or 82.12.022(5) must
29 indicate on the annual report the quantity of product produced in this
30 state during the time period covered by the report.

31 (d) If a person filing a report under this section did not file a
32 report with the department in the previous calendar year, the report
33 filed under this section must also include employment, wage, and
34 benefit information for the calendar year immediately preceding the
35 calendar year for which a tax preference was claimed.

36 (2) As part of the annual report, the department may request

1 additional information necessary to measure the results of, or
2 determine eligibility for, the tax preference.

3 (3) Other than information requested under subsection (2) of this
4 section, the information contained in an annual report filed under this
5 section is not subject to the confidentiality provisions of RCW
6 82.32.330 and may be disclosed to the public upon request.

7 (4) Except as otherwise provided by law, if a person claims a tax
8 preference that requires an annual report under this section but fails
9 to submit a complete report by the due date or any extension under RCW
10 82.32.590, the department must declare the amount of the tax preference
11 claimed for the previous calendar year to be immediately due and
12 payable. The department must assess interest, but not penalties, on
13 the amounts due under this subsection. The interest must be assessed
14 at the rate provided for delinquent taxes under this chapter,
15 retroactively to the date the tax preference was claimed, and accrues
16 until the taxes for which the tax preference was claimed are repaid.
17 Amounts due under this subsection are not subject to the
18 confidentiality provisions of RCW 82.32.330 and may be disclosed to the
19 public upon request.

20 (5) The department must use the information from this section to
21 prepare summary descriptive statistics by category. No fewer than
22 three taxpayers may be included in any category. The department must
23 report these statistics to the legislature each year by October 1st.

24 (6) For the purposes of this section:

25 (a) "Person" has the meaning provided in RCW 82.04.030 and also
26 includes the state and its departments and institutions.

27 (b) "Tax preference" has the meaning provided in RCW 43.136.021 and
28 includes only the tax preferences requiring a survey under this
29 section.

30 NEW SECTION. **Sec. 14.** Sections 1 through 9 of this act constitute
31 a new chapter in Title 82 RCW."

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1 On page 1, line 2 of the title, after "facilities;" strike the
2 remainder of the title and insert "reenacting and amending RCW
3 82.32.590 and 82.32.600; adding a new section to chapter 82.04 RCW;
4 adding a new section to chapter 82.32 RCW; adding a new chapter to
5 Title 82 RCW; and providing expiration dates."

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